IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 249 of 2005(D)

EP.81/1994 of II ADDL.SUB COURT,THRISSUR
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PETITIONER:

KOTTEKKAD CATHOLIC DHARMODAYA SANGHAM REPRESENTED BY ITS PRESENT MANAGING DIRECTOR.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:
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1. THE MARAPREM KURI COMPANY LIMITED, THRISSUR.

*** 2. VARGHESE, S/O.PALATHINGAL THOMAKUTTY, KIZHAKEKOTAYIL, VALUNGAL, THRISSUR VILLAGE, THRISSUR TALUK.**

3. VARGHESE, S/O.CHIRIYANKANDATH JOSEPH, CHEMBUKAVU VILLAGE DESOM, THRISSUR.

*** RESPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY AS PER ORDER IN I.A.1429/06 DATED 27.1.06.**

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF JUDGMENT IN CMA 184/01 DATED 1.2.02 ON THE FILE OF THIS COURT.

EXT.P2 TRUE COPY OF E.A.925/02 IN easement by prescription 81/94 IN O.S. 863/91 ON THE FILE OF SUB COURT, THRISSUR DATED 31.8.02.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 249 OF 2005

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Dated this the 1st day of June, 2007.

J U D G M E N T

This writ petition is filed seeking a direction to close all proceedings in E.P.81/94 after recording full satisfaction of the decree passed in O.S. 863/91 of the very same Court. The original petitioner is the person who had obtained a decree in 14 cases against the two respondents. The first respondent obtained a decree in O.S.863/91 and he filed an execution application for sale of the property. It was sold in auction and purchased by 3rd respondent. The sale was confirmed. Therefore, the writ petitioner herein intervened and submitted that he is prepared to deposit the entire decree amount and also pay the amount due to the auction purchaser. Therefore, the auction purchaser as well as the decree holder can be satisfied and the sale may be set aside and the property may be preserved in order to safeguard his interests with respect to the decrees he had obtained. Accordingly, he deposited an amount of Rs.3.50 lakhs. The decree holder, namely, the first respondent had already received his amount and he has no objection. Similarly, I am informed that

the auction purchaser, viz., 3rd respondent also appeared before Court and submitted that he does not want to get the property and will be satisfied by getting the amount incurred and expenses. Accordingly, out of the deposit amount of Rs.3.5 lakhs, the amount due to him, i.e., Rs.2,33,381/- had been given to him and balance remains in Court deposit. Since the amount is deposited in pursuance of the satisfaction of the decree in O.S.863/91 by the writ petitioner and the claim of the decree holder as well as the auction purchaser had been satisfied. There is balance amount lying in the Court after disbursement of Rs.2,33,381. Since the present writ petitioner has deposited the amount and there is no other claim with respect to that amount it is only just and equitable to release that amount in favour of the writ petitioner. Therefore, the executing Court is directed to return that amount to the decree holder.

2. I am also informed that the sale had already been set aside by this Court by its earlier judgment in Ext.P1. Since, the decree holder as well as the auction purchaser has no objection, the sale has to be treated as set aside.

The writ petition is disposed of as above.

M.N. KRISHNAN, JUDGE.

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